

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



May 8, 2003

Agenda ID# _____
Alternate to Agenda ID# 1836
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 00-05-032.

Enclosed is the Alternate Draft Decision of Commissioner Kennedy to the Draft Decision of Administrative Law Judge (ALJ) Patrick.

When the Commission acts on the draft or alternate decision, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a draft decision be served on all parties, and be subject to public review and comment prior to a vote of the Commission. Rule 77.6(d) provides that comments on the alternate draft decision be filed at least seven days before the Commission meeting.

Comments on the alternate decision must be filed and served May 15, 2003. There will be no reply comments.

Pursuant to Rule 77.3 comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

Angela K. Minkin
Chief Administrative Law Judge

AKM:bb1

Attachment

Decision ALTERNATE DRAFT DECISION OF COMMISSIONER KENNEDY
(Mailed 5/08/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company
to establish Market Values for and to Sell its
Generation-Related Assets Located in Rodeo,
Martinez and Antioch Pursuant to Public Utilities
Code Section 367(b) and 851. (U 39 M)

Application 00-05-032
(Filed May 15, 2000)

**OPINION GRANTING APPLICATION TO SELL PROPERTIES
IN RODEO, MARTINEZ AND ANTIOCH****1. Summary**

Pacific Gas and Electric Company (PG&E) seeks authorization, pursuant to Pub. Util. Code §§ 367(b) and 851, to market value by sale non-nuclear generation-related properties in Rodeo, Martinez and Antioch. The application is unopposed.

The Commission concludes that § 377, as amended by Assembly Bill (AB) 6X, does not bar the sale of generation-related properties no longer used directly or indirectly for electric generation purposes. The application is granted and the proceeding is closed.

2. Procedural History

The application was filed on May 15, 2000, and was noticed in the Commission's Daily Calendar on May 23, 2000. In Resolution ALJ 176-3040, dated June 8, 2000, the Commission preliminarily categorized this proceeding as ratesetting and preliminary determined that hearings were not necessary. No

protests were received regarding the proposed sale of these properties; therefore, a public hearing is not required and, we affirm the determinations made in Resolution ALJ 176-3040.

Since § 377 was amended¹ by the Legislature after this application was filed, the assigned administrative law judge (ALJ) directed PG&E to file a brief addressing the application of § 377 to the proposed land sales. On August 12, 2002, PG&E filed its brief and this matter was submitted for decision based on the pleadings

3. Factual Background

PG&E's application includes the three properties described below:

A. The Rodeo Property

PG&E purchased this 23.8-acre property in 1939 and built a 100-megawatt (MW) steam generation plant on the site. PG&E operated the generation facility until 1987, and removed the generation plant in 1997. The site is currently vacant except for a switchyard. PG&E proposes to sell approximately 22 acres of the property to the Tosco Oil Company and will retain approximately 1.8 acres containing the switchyard. PG&E states that with the exception of the switchyard, the property is not necessary and useful to PG&E's utility distribution operations.

B. The Martinez Property

PG&E purchased this 11-acre property in the late 1930s and built a 40 MW steam generation plant on the site. PG&E operated the generation facility

¹ AB 6 from the 2001-2002 Extraordinary Session (AB 6X) amended § 377, adding the prohibition on sales of facilities for generation of electricity through year-end 2005.

until 1985, and removed it in 1996. PG&E proposes to sell approximately seven acres to Equilon Enterprises LLC. and will retain approximately four acres containing a switching station, substation, gas meter and valve station, and an access road. PG&E states that with the easements it is retaining, it will not need to maintain ownership in fee of the property to be sold.

C. The Antioch Property

In 1992, PG&E acquired this 12-acre parcel of land in Antioch to settle a legal claim related to particulate fallout from the Contra Costa Power Plant, which PG&E has since sold. The property, also known as the “Los Medanos” property, is currently leased to Carone Management and Investment Inc. (Carone), which operates a recreational vehicle storage facility there. Carone has submitted a bid for the property.

4. Discussion

In considering this application, we need to address § 377, which reads:

The commission shall continue to regulate the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those facilities has applied to the commission to dispose of those facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no *facility for the generation of electricity* owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility *generation assets* remain dedicated to service for the benefit of California ratepayers. (Section 377, as amended by AB 6X, emphasis added.)

Thus, before we may consider the merits of this application, we must address the threshold question—does § 377 bar the proposed land transactions?

The assets in question here were owned by PG&E prior to January 1, 1997. We must determine whether the assets that PG&E wants to dispose of are a facility or facilities for the generation of electricity. If so, such assets may not be disposed of prior to January 1, 2006. The obvious example of a facility used for the generation of electricity would be a power plant, which literally is a facility that generates electricity. Section 377 clearly bars disposal of power plants owned by public utilities.²

But we are left with the question of whether § 377 only bars disposal of a power plant, itself, or whether it has a broader scope. We must determine whether a facility for the generation of electricity includes more than just the power plant. For example, does § 377 bar the sale of generation-related properties no longer used directly or indirectly for electric generation purposes?

Section 377 does not specifically define the phrase “facility for the generation of electricity” or “generation assets.” However, upon reviewing the legislative history, we believe that the fundamental purpose of § 377 is to ensure that “public utility generation assets remain dedicated to service for the benefit of California ratepayers.” It is uncontroverted that these properties are no longer used directly or indirectly for electric generation purposes. Thus, these properties are not the kind of facility that the Legislature had in mind when it enacted AB 6X to amend § 377.³

² This is confirmed by the subsequent enactment of § 377.1, which expressly exempted six hydroelectric plants from the restrictions of § 377.

³ For example, the Senate Energy, Utilities and Communications Committee Analysis confirms the intended scope of the legislation. It states: “The bill further flatly prohibits the sale of any public utility-owned *power plant* until January 1, 2006.” (Emphasis added.) The analysis goes on to state: “The generation assets in question –

Footnote continued on next page

Furthermore, the Commission has provided its interpretation of § 377 in the context of PG&E's application to market value and sell its Kern Facility. (Decision (D.) 01-04-004, 2001 Cal PUC LEXIS 414.) The Kern Facility was the site of a PG&E (non-operating) power plant. While the Commission rejected PG&E's proposed sale of the Kern Facility as being barred by statute, the discussion in D.01-04-004 supports the position that § 377 applies only to facilities that actually generate electricity. Specifically, the Commission states:

Given the unreasonable nature of the current wholesale market, and the Federal Energy Regulatory Commission's failure to act to correct the market problems, it is not in the public interest to divest regulated utility generation assets, where the owners of those divested assets could then sell power to ratepayers at unreasonable market prices, or manage power production and sales in ways that do not benefit California consumers. This concern has led the Legislature to preclude divestiture of utility generation assets until 2006, and led the Commission to defer approval of application to sell the Mohave, Palo Verde and Four Corners generation facilities. (D.01-04-004, 2001, Cal. PUC LEXIS 414, *4-5.)

The Commission's reasoning in rejecting the Kern Facility sale, with the emphasis on the ability to "sell power to ratepayers at unreasonable market prices," supports the argument that § 377 was not intended to preclude the sale of land that was not used directly or indirectly to generate electricity. In the instant proceeding, the new owners of the properties at issue would not be able

those that are retained by the utilities – are PG&E's hydroelectric system and its Diablo Canyon nuclear plant; SCE's hydroelectric system, its interest in the San Onofre nuclear plant and its interest in the Mohave coal-fired plant in Arizona; and SDG&E's interest in the San Onofre nuclear plant." Again, the focus is on specific facilities that actually generate electricity.

to use the assets to “then sell power to ratepayers at unreasonable market prices.” Unlike the Mohave, Palo Verde and Four Corners facilities, the properties at issue do not directly or indirectly generate electricity. Whereas the Kern Facility was an actual power plant, (albeit a non-operating plant), the properties at issue are but parcels of real property that formerly supported a generation asset that has long since been dismantled and removed. Therefore, we find that § 377 does not apply to the proposed sale.

5. California Environmental Quality Act (CEQA)

Neither PG&E nor the buyers seek authority from the Commission to change the existing uses of the properties. Thus, it can be seen with certainty that there is no possibility that the transfer of ownership of the properties may have a significant effect on the environment. Accordingly, under CEQA Guideline 15061 (b)(3), the proposed sale is not subject to CEQA.

6. Ratemaking Treatment

PG&E proposes to credit the TCBA with the net proceeds after accounting for transaction costs, taxes and net book value. If sales proceeds do not yield a credit, the uneconomic costs will be amortized over the remaining months of the transition period.

At the request of the Office of Ratepayer Advocates (ORA), PG&E provided further details regarding the proposed accounting treatment in its May 29, 2000 supplement to the application. ORA does not oppose PG&E’s proposed accounting treatment or the proposal to sell the properties.

7. Conclusion

The properties to be sold are no longer needed for PG&E’s operations. And, sale of the properties will remove these costs from the utility’s rate base

and reduce operating expenses, resulting in lower rates for all ratepayers.

Therefore, we conclude that sale of the properties is in the public interest and the application should be granted.

8. Comments on Alternate Draft Decision

The alternate draft decision of Commissioner Kennedy in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received from _____.

9. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Rodeo, Martinez and Antioch properties are no longer used directly or indirectly for electric generation purposes.

2. Section 377 does not bar the sale of the Rodeo, Martinez and Antioch properties because none of these properties are a “facility for generation of electricity” or a “generation asset.”

3. Sale of the Rodeo, Martinez and Antioch properties is not an activity subject to CEQA because the proposed change in ownership will not result in a direct or reasonably foreseeable indirect physical change in the environment.

4. Sale of the Rodeo, Martinez and Antioch properties is in the public interest because these properties are no longer needed for PG&E utility operations, and sale of the properties will result in reduced rate base and operation expenses, thereby resulting in lower rates for all ratepayers.

Conclusion of Law

PG&E’s application to sell the Rodeo, Martinez and Antioch properties should be granted.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Gas and Electric Company to sell the Rodeo, Martinez and Antioch properties is granted.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.